

DATED

STAFFORDSHIRE COUNTY COUNCIL (1)

AND

MIDLANDS BUILDING & MAINTENANCE LIMITED (2)

**FRAMEWORK AGREEMENT
RELATING TO THE PROVISION OF SUPPLY AND
INSTALLATION OF NEW AND REPAIR OF EXISTING
FENCES AND ASSOCIATED SERVICES**



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THIS AGREEMENT is made on

BETWEEN: -

- (1) **STAFFORDSHIRE COUNTY COUNCIL** of 2 Staffordshire Place, Stafford, ST16 2DH ("**the County Council**"); and
- (2) **MIDLANDS BUILDING & MAINTENANCE LIMITED** (Company Number 10941120) whose registered address in England and Wales is at Newtown Industrial Estate, Tewkesbury, GL20 8JG ("**the Provider**").

BACKGROUND

- (A) The Council placed a contract notice 2025/S 000-036247 on 30.06.2025 on the UK e-notification service (FATS) seeking expressions of interest from potential contractors for Works (divided into Lots) to itself [and the Other Contracting Bodies] identified in the contract notice under a framework agreement.
- (B) Following receipt of expressions of interest, the Council invited potential providers (including the Provider) on 30.06.2025 to tender for the Works.
- (C) On the basis of the Provider's Tender, the Council selected the Provider to enter a framework agreement for Works.
- (D) This Framework Agreement sets out the procedure for ordering Works, the main terms and conditions for Works and the obligations of the Provider under this Framework Agreement.
- (C) This Framework Agreement sets out the award and ordering procedure for works which may be required by Customers, the main terms and conditions for any Call-Off Contract which Customers may conclude, and the obligations of the Provider during and after the term of this Framework Agreement.
- (D) It is the Parties' intention that there will be no obligation upon Customers to award any Orders or enter into any Call-off Contracts under this Framework Agreement during its Term.
- (E) For the purposes of this Framework Agreement and any Call-Off Contracts where the term "Employer" or "Client" is used it shall mean the "Customer" and where the term "Provider" is used it shall mean the "Contractor" and vice versa.

IT IS AGREED as follows:-

1. DEFINITIONS

- 1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings: -

"Accreditation"	means the accreditation to be maintained by the Provider throughout the Term and any Call-Off Contracts as detailed in the ITT;
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“Action Plan”	means the plan submitted by the Provider as part of their Tender as detailed in Schedule 10, which will be updated from time to time;
"Approval"	means the prior written approval of the County Council
"Audit"	means an audit carried out pursuant to Clause 19
"Auditor"	means the National Audit Office (or any successor body thereto) or an auditor appointed by Public Sector Audit Appointments Limited, (or any successor body thereto) as the context requires or an internal audit body of the County Council
“BCIS Index”	means the BCIS General Building Cost Index (Excluding M&E) published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors
“Business Continuity Plan”	means the documented plan created pursuant to clause 40 in order to ensure the Provider is able to continue to meet its obligations under this Framework Agreement and any Call-Off Contract
"Call-Off Contract"	means the legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Required Works made between a Customer and the Provider
“Call-Off Terms and Conditions”	means the JCT Design and Build Terms and Conditions, or any others stipulated terms as required, as detailed in Schedule 4
"Commencement Date"	means 01.11.2025
"Commercially Sensitive Information"	means any Confidential Information comprised of information: - (a) which is provided in writing by the Provider to the County Council in confidence and designated as Commercially Sensitive Information; and/or (b) that constitutes a trade secret
“Competed Works”	means where the Customer runs a mini-competition under this Framework Agreement as detailed in clause 9;

"Confidential Information"	means: - (a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the Data Protection Legislation; and (b) the Commercially Sensitive Information
"Customer"	means the County Council and any other contracting authority (as defined in regulation 3 of the Regulations) (the "Contracting Authority") described in the FATS.
"DBS"	means the organisation established under the Protection of Freedoms Act 2012 and formed on 1 December 2012 by the merging functions of the Criminal Records Bureau and the Independent Safeguarding Authority and any successor organisation
"Data Protection Legislation"	means all Applicable Laws of the UK relating to the processing of personal data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 (DPA 2018) to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR). The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018;
"Employer"	means the Customer commissioning the Required Work
"Employer's Agent"	means the employer's agent as may be appointed by the Customer from time to time and notified to the Provider;
"Enquiry"	means an enquiry in relation to Required Works in a form detailed by the Customer or a verbal enquiry;
"Environmental Information Regulations"	mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
Expiry Date	shall mean the third year from the Commencement Date, namely 31.10.2028;

"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation
"Framework Agreement"	means this agreement and all Schedules to this agreement
"Framework Agreement Variation Procedure"	means the procedure set out in Schedule 6
"Fraud"	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Framework Agreement or defrauding or attempting to defraud or conspiring to defraud any Customer
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances
"Guidance"	means any guidance issued or updated by the UK government and industry bodies from time to time in relation to the Regulations.
"Information"	has the meaning given under Section 84 of the Freedom of Information Act 2000
"ITT"	means the invitation to tender issued by the County Council in respect of the Framework Agreement on 30.06.2025.
"Intellectual Property Rights"	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
"JCT Design and Build Terms and Conditions"	means the JCT Design and Build Contract 2024 Edition as amended by Schedule 4 Part One
"KPIs"	Means the key performance indicators detailed in Schedule 9

"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body
"Material Default"	means any breach of Clause 13 (Safeguard Against Fraud), Clause 14 (Call-Off Contract Performance), Clause 16 (Statutory Requirements), Clause 17 (Non-Discrimination), Clause 19 (Records and Audit Access), Clause 21 (Freedom of Information)), Clause 22 (Data Protection), Clause 29 (Transfer and Sub-contracting) and a material default of the Call-Off Contract;
"Month"	means a calendar month
"Order"	means an order for Works served by a Customer on the Provider in accordance with the Ordering Procedures
"Order Form"	means a document setting out details of an Order as detailed in Schedule 3;
"Ordering Procedures"	means the ordering and award procedures specified in Clause 9
"Other Contracting Bodies"	means all Customers except the County Council
"Other Framework Agreement"	means any other framework agreement concluded by the County Council pursuant to the ITT
"Other Provider"	means any other person or organisation who has also been appointed to this Framework Agreement;
"Parent Company"	Means any company which is the ultimate Holding Company of the Provider and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged in the same or similar business to the Provider. The term "Holding Company" shall have the meaning ascribed by Section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto
"Party"	means the County Council and/or the Provider
"Premises"	means the land and buildings in which the Required Works is to be carried out / delivered;
"Pricing Adjustment"	means the calculation to be used to adjust the Pricing Matrices during the extension of the Term in accordance with BCIS Index and as detailed in Schedule 2;
"Pricing Matrices"	means the pricing matrices set out in Schedule 2

“Principal Contractor”	means the contractor with overall control over the construction phase of Works involving more than one contractor. Appointed in writing by the Employer to plan, manage, monitor and coordinate health and safety during the Works;
“Rebate”	means an amount calculated in accordance with Clause 15.2 payable by the Provider to the Customer at the end of each Framework Year;
"Regulations"	means the means the Procurement Act 2023, the Procurement Regulations 2024 and where applicable the guidance and procurement policy notes (PPNs) issued by Central Government;
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the County Council
"Requests for Information"	means a request for information or an apparent request under the FOIA or the Environmental Information Regulations
“Required Works”	means any Works identified by a Customer in an Enquiry and Order
“School”	means an institution for educating children;
“SQ Response”	means the response submitted by the Provider to the selection questionnaire as part of the Tender;
“Site”	means the area of which the Contractor has the right of access to under the Required Works unless otherwise described in the Call-Off Contract;
"Staff"	means all persons employed by the Provider together with the Provider's servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Framework Agreement or Call-Off Contracts
“Tender”	means the tender submitted by the Provider to the County Council in response to the ITT on 11.08.2025 and set out at Schedule 10
"Term"	means the period commencing on the Commencement Date and Expiry Date (subject to extension pursuant to Clause 5 of this Framework Agreement) or on earlier termination of this Framework Agreement

“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014)
“TUPE Schedule”	means the provisions contained in Schedule 8 of this Framework Agreement
"Works"	means any Works described in Schedule 1
"Working Days"	means any day other than a Saturday, Sunday or public holiday in England and Wales
"Year"	means a calendar year

2. INTERPRETATION

2.1 The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:-

- 2.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 2.2.2 words importing the masculine include the feminine and the neuter;
- 2.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 2.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 2.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 2.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- 2.2.7 references in this Framework Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Framework Agreement so numbered;
- 2.2.8 references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a

reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered;

- 2.2.9 reference to a Clause is a reference to the whole of that clause unless stated otherwise; and
- 2.2.10 In the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules.

3. COUNTY COUNCIL'S OBLIGATIONS

- 3.1 Save as otherwise expressly provided, the obligations of the County Council under the Framework Agreement are obligations of the County Council in its capacity as a contracting counterparty and nothing in the Framework Agreement shall operate as an obligation upon, or in any other way fetter or constrain the County Council in any other capacity, nor shall the exercise by the County Council of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the County Council to the Provider.

4. ENTIRE AGREEMENT

- 4.1 This Framework Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Framework Agreement. The Framework Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.
- 4.2 In the event of and only to the extent of any conflict between the body of the Agreement, the ITT, the Tender and other documents referred to or attached to this Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
 - 4.2.1 the body of the Framework Agreement shall prevail over;
 - 4.2.2 the Schedules (save that the DBS provisions in Schedule 7 shall take equal precedence with the body of the Agreement);
 - 4.2.3 the ITT/SQ Response;
 - 4.2.3 any other document referred to in the Framework Agreement.

PART ONE: FRAMEWORK ARRANGEMENTS AND AWARD PROCEDURE

5. TERM OF FRAMEWORK AGREEMENT

The Framework Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated) shall terminate at the end of the Term PROVIDED THAT the County Council may extend the Term by up to twelve (12) Months on one occasion only by serving not less than three (3) Months written notice on the Provider prior to the end of the Term.

6. SCOPE OF FRAMEWORK AGREEMENT

6.1 The main objectives of this Framework Agreement are to achieve the following:

6.1.1 Work collaboratively throughout the Term as part of a one team approach to help ensure:

6.1.1.1 commercial documents such as forms of contract, performance bonds and collateral warranties are executed in a timely manner;

6.1.1.2 Works are delivered on time and key milestones are met;

6.1.1.3 The project brief and specification are achieved within the prescribed budget and or cost benchmark; and

6.1.1.4 Works are delivered within the contract sum;

6.1.2 Promote broader ownership of health & safety to help reduce the number of reportable incidents and make construction an even safer industry to work in;

6.1.3 Raise economic prosperity by providing local supply chain opportunities;

6.1.4 Promote fair payment (within 30 days) right along the supply chain.

6.1.5 Identify what social value can be achieved from each construction contract and where cost effective, deliver wider community benefit; and

6.1.5 Develop a culture of 'doing the job right first time' to reduce the number of defects and ensure that when defects do arise, they are addressed straight away (the "Framework Objectives").

6.2 This Framework Agreement governs the relationship between the County Council and the Provider in respect of the provision of Works by the Provider to Customers.

- 6.3 Customers may at their absolute discretion and from time to time order Works from the Provider in accordance with the Ordering Procedure during the Term.
- 6.4 The Provider acknowledges that there is no obligation for any Customer to purchase any Works from the Provider during the Term.
- 6.5 Other Contracting Bodies may also utilise this Framework Agreement and enter into Call-Off Contracts pursuant to the terms of this Framework Agreement as if they were also a Party to it and this Framework Agreement shall apply mutatis mutandis in relation to them.
- 6.6 The Parties acknowledge and agree that the Other Contracting Bodies have the right to order Works pursuant to this Framework Agreement provided that they comply at all times with the Regulations and the ordering procedure in clause 9. If there is a conflict between clause 9 and the Regulations, the Regulations shall take precedence.
- 6.7 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the County Council in respect of the total quantities or values of Works to be ordered by them or any Other Contracting Body pursuant to this Framework Agreement and the Provider acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.
- 6.8 The County Council shall not in any circumstances be liable to the Provider or any Other Contracting Body for payment or otherwise in respect of any Services provided by the Provider to any Other Contracting Body.

Collaborative Working

- 6.9 In line with the Framework Agreement objectives, the Parties shall:
 - 6.9.1 work together in an open, honest and co-operative manner to achieve the objectives of the Framework Agreement;
 - 6.9.2 meet regularly to monitor, review and resolve performance issues of each of the Parties, personnel and systems to ensure they meet the minimum requirements of the Framework Agreement and strive to improve;
 - 6.9.3 shall use a team approach solving irrespective of the source of the problem. Such joint working will be considered “at risk” when carried out prior to the placing of an official Order for the Works; and
 - 6.9.4 where matters indicated above occur on an individual Call-Off Contract the relevant contractual mechanisms under such Call-Off Contract shall apply should any form of reimbursement of costs be sought.

Providers Supply Chain

- 6.10 It is an essential part of this Framework Agreement that all businesses that form part of the Provider’s supply chain shall co-operate fully in achieving the Framework Objectives detailed above.

- 6.11 To achieve the required levels of co-operation, the Framework Objectives detailed above must be incorporated within the supply chain contracts.
- 6.12 It is essential to the effective application of this Framework Agreement for the supply chain to be involved in the early processes of a scheme where time is available and to achieve the Framework Objectives detailed above.

Obligation to Advertise Supply Chain Opportunities

- 6.13 The Provider shall ensure that all Sub-contracts which the Provider intends to procure following date of this Framework Agreement, and which the Provider has not, before the date of this Framework Agreement, already awarded to a particular sub-contractor, are:
 - 6.13.1 advertised; and
 - 6.13.2 awarded following a fair, transparent and competitive process proportionate to the nature and value of the sub-contract; notwithstanding the need to obtain three quotations for each of the packages of work
- 6.14 Any Sub-contract awarded by the Provider pursuant to clause 6.13 must contain suitable provisions to impose, as between the parties of the Sub-contract:
 - 6.14.1 requirements to the same effect as those in clause 6.13; and
 - 6.14.2 a requirement for the Sub-contractor to include in any sub-contracts which it in turn awards, suitable provisions to impose, as between the parties to that sub-contract, requirements to the same effects as those required by this clause 6.14
- 6.15 For the purposes of Clauses 6.13 and 6.14, “Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Customer in a sub-contracting chain, made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Framework Agreement and “Subcontractor” means any third party with whom:
 - 6.15.1 the Provider enters into a Sub-contract; or
 - 6.15.2 a third party under 6.15.1 enters into a Subcontract; or
 - 6.15.3 the servants or agents of that third party

Communications Protocol

- 6.16 For the purposes of maintaining open communications between all Parties to this Framework each Party shall assign an individual who shall become the first point of contact for matters appertaining solely to this Framework Agreement (the “Framework Manager”).
- 6.17 The appointment of the Framework Manager shall in no way interfere with or over-ride the communication protocols set out in any of the individual Call-Off Contracts.
- 6.18 As part of the Framework Communications Protocol, each Party shall agree a universal protocol for communications. Notwithstanding this protocol, all issues must be confirmed in writing either by mail, fax, email or the like within five (5) Working Days of raising the issue(s).

Risk Assessments and Risk and Risk Allocation

- 6.19 As part of the collaborative working requirements, all Parties shall assist in the preparation of risk assessment/risk allocation and risk reduction exercises for each scheme at the pre-contract stage of the individual Call-Off Contracts.
- 6.20 All Parties shall agree who will be responsible for the carrying out of risk allocation and the associated costs attributed to them.
- 6.21 As part of ongoing improvements each Party shall collaborate and review the schemes risks and keep all Parties updated of significant changes and responsibilities.

Health and Safety

- 6.22 Notwithstanding the Parties' statutory obligations regarding health, safety and welfare issues, each Party to this Framework Agreement shall proactively pursue zero reporting of incidents and continually review good practice.
- 6.23 The Parties to this Framework Agreement shall develop and continually operate a culture of health and safety on construction sites to be of paramount importance to all persons attending the site, irrespective of their individual involvement in the site.
- 6.24 To openly and enthusiastically encourage the gaining of relevant Construction Skills Certification Scheme or equal and approved, to all those persons attending the site in whatever capacity.
- 6.25 To ensure that statutory health and safety consultations are carried out when pertinent to do so. This is not to be mutually exclusive to the Providers employees, but where appropriate should include members of the supply chain.

Sustainability

- 6.26 The County Council has a commitment to sustainable developments wherever practicable and seeks the assistance of the Provider to achieve this aim by:
 - 6.26.1 Compliance to site waste management legislation and protocols;
 - 6.26.2 Reduction in the quantities of energy and water that is used in the construction process;
 - 6.26.3 Use of materials and processes that may have an adverse effect upon the environment or the depletion of natural resources;
 - 6.26.4 Use of materials that potentially reduce the need for maintenance and enhance the life of component(s) to which they are connected to; and
 - 6.26.5 Proactively reduce the Carbon Dioxide emissions by sourcing labour/subcontractors/materials locally wherever practicable and cost effective.

Value Engineering

- 6.27 As part of collaborative working, all Parties to this Framework Agreement should proactively consider value engineering exercises/processes which could:
- 6.27.1 Improve the life cycle of all components so evaluated;
 - 6.27.2 Reduce capital or ongoing revenue costs to the development; and
 - 6.27.3 Reduction in construction and commissioning periods.

Early Warning

- 6.28 Notwithstanding the requirements of the individual Call-Off Contracts, both Parties to this Framework Agreement shall:
- 6.28.1 Advise each other of potential problems that could affect the efficacy of this Framework Agreement;
 - 6.28.2 Advise each other of any potential problems that could affect the efficacy of the Framework Objectives detailed above; and
 - 6.28.3 Ensure the effective operation of any or all individual works contractors.

7. THE PROVIDER'S APPOINTMENT

- 7.1 The County Council appoints the Provider as a potential provider of Works and the Provider shall be eligible to be considered for the award of Orders for Required Works during the Term.
- 7.2 The Customer or their representatives will periodically during the Term vet Providers for Principal Contractor eligibility.
- 7.3 Throughout the Term the Provider will maintain the relevant Accreditations which will be checked by the County Council annually.
- 7.4 Young people leaving care and not returning to their own families are provided with support to enable them to live independently in the community. The Provider will familiarise themselves with the Care Leavers Local Offer and the Care Leavers Covenant which can be found on the County Council's website (the "Covenant").
- 7.5 The County Council is signed up to the Covenant and requires the Provider to register and sign up to the Covenant within the first 2 months of the commencement of the Framework Agreement. The Provider will liaise with the County Council's Covenant Engagement Team to look towards confirming a pledge within 6 months of the Commencement Date.
- 7.6 The Provider will engage with the County Council's Covenant Engagement Team to contribute to achieving one or more of the following Care Leaver outcomes: -
- 7.6.1 Care leavers are better prepared and supported to live independently;
 - 7.6.2 Care leavers have improved access to employment, education and training;

- 7.6.3 Care leavers experience stability in their lives and feel safe and secure;
 - 7.6.4 Care leavers have improved access to health and emotional support;
 - 7.6.5 Care leavers achieve financial stability.
- 7.7 The Provider is required to work with the County Council's Covenant Engagement Team, at least annually, to develop offers and to record and demonstrate the impact and effectiveness of their offer.
- 8. NON-EXCLUSIVITY**

The Provider acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the County Council for Works from the Provider and that Customers are at all times entitled to enter into other contracts and arrangements with Providers (other than via this Framework Agreement) for the provision of any or all works which are the same as or similar to the Works.

9. AWARD PROCEDURES

Awards under the Framework Agreement

- 9.1 If a Customer decides to source Works through this Framework Agreement then it may do so in accordance with the terms laid down herein.

Required Works (Awards without re-opening Competition)

- 9.2 Any Customer ordering Standard Services under the Framework Agreement without re-opening competition shall:
 - (a) identify the relevant Lot which its Standard Services requirements fall into;
 - (b) send an Order to the Framework Provider ranked highest following the evaluation of its Tender as set out in Schedule 10;
 - (c) if the Framework Provider who was ranked highest is not able to provide the Services, send an Order to the Framework Provider ranked next highest;
 - (d) repeat the process set out in clause 9.2(c) until the Order is fulfilled or there are no further Framework Providers qualified to fulfil it.

Competed Services (awards following mini-competitions)

- 9.3 Any Customer ordering Competed Services under the Framework Agreement shall:
 - (a) identify the relevant Lot(s) that its Competed Services requirements fall into;
 - (b) identify the Framework Providers capable of performing the Contract for the Competed Services requirements;
 - (c) supplement and refine the Call-off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Procurement Act 2023 and Guidance;

(d) invite tenders by conducting a mini-competition for its Competed Services requirements in accordance with the Procurement Act 2023 and Guidance and in particular:

- (i) consult in writing the Framework Providers capable of performing the Contract for the Competed Services requirements and invite them within a specified time limit to submit a Supplemental Tender;
- (ii) set a time limit for the receipt by it of the Supplemental Tenders which takes into account factors such as the complexity of the subject matter of the Contract and the time needed to submit tenders; and
- (ii) keep each Supplemental Tender confidential until the expiry of the time limit for the receipt by it of the Supplemental Tenders;
- (e) apply the Competed Services Award Criteria to any compliant Supplemental Tenders submitted through the mini-competition; and
- (f) subject to clause 9.5 place an Order with the successful Framework Provider.

9.4 The Supplier agrees that all Supplemental Tenders submitted by the Supplier in relation to a mini-competition held pursuant to this clause 9 shall remain open for acceptance for 30 days (or such other period specified in the invitation to tender issued by the relevant Customer in accordance with this clause 9.

9.5 Notwithstanding the fact that the Customer has followed the procedure set out above for Competed Services, the Customer may cancel, postpone, delay or end the procedure without placing an Order for Services or awarding a Contract. Nothing in this Framework Agreement shall oblige any Customer to place any Order for Services.

Responsibility for awards

9.6 The Supplier acknowledges that each Customer is independently responsible for the conduct of its award of Contracts under the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever or howsoever arising in relation to:

- (a) the conduct of Other Contracting Bodies in relation to the Framework Agreement; or
- (b) the performance or non-performance of any Contracts between the Supplier and Other Contracting Bodies entered into pursuant to the Framework Agreement.

Form of Order

9.7 Subject to clause 9.1 to clause 9.6, each Customer may place an Order with the Supplier by serving an order in writing in substantially the form set out in

Schedule 3 or such similar or analogous form agreed with the Supplier including systems of ordering involving e-mail or other online solutions.

Accepting and declining Orders

- 9.8 Following receipt of an Order, the Supplier shall promptly and in any event within a reasonable period determined by the relevant Customer and notified to the Supplier in writing at the same time as the submission of the Order (which in any event shall not exceed three Working Days) acknowledge receipt of the Order and either:

(a) notify the Customer in writing and with detailed reasons that it is unable to fulfil the Order; or

(b) notify the relevant Customer that it is able to fulfil the Order by signing and returning the Order Form.

- 9.9 If the Supplier:

(a) notifies the Customer that it is unable to fulfil an Order; or

(b) the time limit referred to in clause 9.8 has expired;

then the Order shall lapse and the relevant Customer may then send that Order to another Framework Provider in accordance with the procedure set out in clause 9.2(d).

- 9.10 If the Supplier modifies or imposes conditions on the fulfilment of an Order, then the Customer may either:

(a) reissue the Order incorporating the modifications or conditions; or

(b) treat the Supplier's response as notification of its inability to fulfil the Order and the provisions of clause 9.9 shall apply.

- 9.11 The Parties acknowledge and agree that the placement of an Order is an "invitation to treat" by the Customer. Accordingly, the Supplier shall sign and return the Order Form which shall constitute its offer to the Customer. The Customer shall signal its acceptance of the Supplier's offer and the formation of a Contract by counter-signing the Order Form.

9.12 Terms of Call-Off Contracts

The Call-Off Terms and Conditions are hereby incorporated by reference into any Call-Off Contract formed pursuant to this Clause 9. The Customer may from time-to-time, request that an alternative form of contract than the Call-Off Terms and Conditions specified in this Framework Agreement is used for the Required Works, subject to such formal contract replicating as closely as possible the terms of the Call-Off Terms and Conditions and subject to the Provider's consent (not to be unreasonably withheld or delayed).

PART TWO: THE PROVIDER'S GENERAL FRAMEWORK OBLIGATIONS

10. WARRANTIES AND REPRESENTATIONS

- 10.1 The Provider warrants and represents to the County Council and each of the Other Contracting Bodies that: -
- 10.1.1 it has full capacity and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;
 - 10.1.2 this Framework Agreement is properly executed by duly authorised directors or a duly authorised director and secretary of the Provider;
 - 10.1.3 in entering into this Framework Agreement or any Call-Off Contract it has not committed any Fraud;
 - 10.1.4 as at the Commencement Date, all information, statements and representations contained in the Tender and the SQ Response for the Works are true, accurate and not misleading save as may have been specifically disclosed in writing to the County Council prior to the execution of this Framework Agreement and it will promptly advise the County Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
 - 10.1.5 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Framework Agreement;
 - 10.1.6 it has not caused or induced any person to enter such agreement referred to in Clause 10.1.4 above;
 - 10.1.7 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Works under the Framework Agreement;
 - 10.1.8 it has not committed any offence under the Bribery Act 2010;
 - 10.1.9 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the County Council or Other Contracting Bodies;

- 10.1.10 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with a Customer;
- 10.1.11 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue; and
- 10.1.12 in the three (3) years prior to the date of this Framework Agreement: -
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Framework Agreement.

11. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 11.1 The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the County Council or any other public body or person employed by or on behalf of the County Council or any other public body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Framework Agreement, any Call-Off Contract or any other contract with the County Council or any other public body or person employed by or on behalf of the County Council or any other public body (including its award to the Provider, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract. The attention of the Provider is drawn to the criminal offences under the Bribery Act 2010.
- 11.2 The Provider warrants that it has not paid commission nor agreed to pay any commission to the County Council or any other public body or any person employed by or on behalf of the County Council or any other public body in connection with this Framework Agreement, any Call-Off Contract or any other contract with the County Council or any other public body or person employed by or on behalf of the County Council or any other public body.
- 11.3 If the Provider, its Staff or any person acting on the Provider's behalf, engages in conduct prohibited by Clauses 11.1 or 11.2 above or commits any offence under the Bribery Act 2010 the County Council may:-

- 11.3.1 terminate the Framework Agreement with immediate effect by giving notice in writing to the Provider and recover from the Provider the amount of any loss suffered by the County Council resulting from the termination; or
- 11.3.2 recover in full from the Provider and the Provider shall indemnify the County Council in full from and against any other loss sustained by the County Council in consequence of any breach of this Clause, whether or not the Framework Agreement has been terminated.

12. CONFLICTS OF INTEREST

- 12.1. The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the County Council) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and/or any Staff and the duties owed to the County Council under the provisions of this Framework Agreement or any Call-Off Contract.
- 12.2. The Provider shall promptly notify and provide full particulars to the County Council if such conflict referred to in Clause 12.1 above arises or is reasonably foreseeable to arise.
- 12.3. The County Council reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the County Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the County Council under the provisions of this Framework Agreement or any Call-Off Contract. The action of the County Council pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the County Council.
- 12.4. This Clause shall apply during the Term and for a period of two (2) years after its termination or expiry.

13. SAFEGUARD AGAINST FRAUD

The Provider shall safeguard the County Council against Fraud generally and, in particular, Fraud on the part of the Provider or its Staff. The Provider shall notify the County Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

14. CALL-OFF CONTRACT PERFORMANCE

- 14.1 The Provider shall perform all Call-Off Contracts entered into with a Customer in accordance with: -
 - 14.1.1 the requirements of this Framework Agreement; and
 - 14.1.2 the terms and conditions of the respective Call-Off Contracts.
- 14.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement and the terms and conditions of a

Call-Off Contract, the terms and conditions of this Framework Agreement shall prevail.

- 14.3 The Provider shall be available as reasonably required by any Customer for progress meetings with the relevant Customer to discuss specific Call-Off Contracts either at the relevant Customer's offices or at the site which is the subject of the Call-Off Contract in question. The Provider shall also be available as reasonably required by the County Council for meetings with the County Council to review the performance of the Provider under this Framework Agreement. The Provider shall not make any charge to any Customer in respect of any such meetings.
- 14.4 The Provider's performance of Call-Off Contracts shall be assessed against the KPIs in the manner detailed in Schedule 9 and the Action Plan on a quarterly basis.
- 14.5 The Provider shall ensure that all Staff engaged in the performance of Call-Off Contracts shall have the correct skills and qualifications to undertake the Works which are the subject of such Call-Off Contract. Proof of such skills and qualification is to be provided by the Provider to the County Council in writing at the County Council's request.

15. PRICES FOR WORKS AND REBATES

PRICES

- 15.1 The prices offered by the Provider to Customers for Call-Off Contracts for Required Works shall be the prices detailed in the Pricing Matrices.
- 15.2 The prices detailed in the Pricing Matrices shall be adjusted in each year of the Term by the application of the BCIS Index which will be described as part of the Pricing Matrices and included as an appendix to Schedule 2.
- 15.3 In the event that the Term is extended pursuant to clause 5 the Price Adjustment may be applied.
- 15.4 The Provider shall ensure that its Sub-Contractors and other members of the supply chain shall be paid in full within 30 days of payment becoming due and/or owing in accordance with governmental guidelines and directives.
- 15.5 All invoices to be issued by the Provider to the County Council as the Customer should be sent to apinvoices@staffordshire.gov.uk.

REBATES

- 15.6 The Provider shall pay a Rebate to the County Council calculated on the basis of all Customers' annual Customer spend in each Framework Year calculated on the basis of the gross value (including VAT) of the Services and total Contract Price paid by all Customers to the Provider pursuant to all of the Contracts called off under this Framework Agreement in the relevant Framework Year and shall be calculated and paid by the Provider to the County Council as detailed in this Clause 15.6 to 15.9.

- 15.7 At the end of each Framework Year, the County Council shall submit a statement to the Provider showing the net value (excluding VAT) of the Services and total Contract Price received by the Provider for all Contracts entered into pursuant to this Framework Agreement, in the relevant Framework Year and the Rebate that is due and payable by the Provider to the County Council ("Rebate Statement"). Unless the Provider disputes the Rebate Statement, the Provider shall pay the Rebate to the County Council in cleared funds to the bank account nominated in writing by the County Council within 30 days of receipt of the Rebate Statement and any associated invoice.
- 15.8 In the event that the Provider disputes the Rebate Statement, the Parties shall work together to agree any anomalies and to complete a reconciliation of the Rebate Statement within five (5) Working Days of receipt of the Rebate Statement by the Provider. The Provider shall provide all such evidence as the County Council may reasonably request in order to verify:
- (a) any amounts disputed by the Provider; and
- (b) the calculation of the Rebate payable; and
- the Provider shall, on request, allow the County Council to inspect and take copies of (or extracts from) all relevant records and materials of the Provider relating to the supply of the Services pursuant to Contracts as may be reasonably required in order to verify such matters. The County Council's final determination of the amount of Rebate payable by the Provider to the County Council shall be final and binding on the Provider.
- 15.9 The amount of Rebate for each Framework Year specified in Clauses 15.6 and 15.7 above shall be fixed at 0.5% of the gross value (including VAT) of the Services and total Contract Price received by the Provider from all Customers for all Contracts entered into pursuant to this Framework Agreement.
- 15.10 For the avoidance of doubt, a breach by the Provider of Clauses 15.6 to 15.9 shall constitute a material breach.

16. STATUTORY AND OTHER REQUIREMENTS

- 16.1 The Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and any Call-Off Contract.

17. NON-DISCRIMINATION

- 17.1 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).
- 17.2 The Provider shall take all reasonable steps to secure the observance of Clause 17.1 by all servants employees or agents of the Provider and all suppliers and sub-contractors employed in the execution of the Framework Agreement.

PART THREE: THE PROVIDER'S INFORMATION OBLIGATIONS

18. PROVISION OF MANAGEMENT INFORMATION

- 18.1 The County Council may, from time-to-time, request relevant written management information from the Provider to facilitate the operation of the Framework Agreement and manage its performance. The Provider will, within ten (10) Working Days, submit the requested information.

19. RECORDS AND AUDIT ACCESS

- 19.1 The Provider shall keep and maintain until twelve (12) years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Works provided under it, the Call-Off Contracts entered into with Customers and the amounts paid by each Customer.
- 19.2 The Provider shall keep the records and accounts referred to in Clause 19.1 above in accordance with good accountancy practice.
- 19.3 The Provider shall afford the County Council and/or the Auditor such access to such records and accounts as may be required from time to time.
- 19.4 The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) during the Term and for a period of twelve (12) years after expiry of the Term to the County Council (or relevant Customer) and the Auditor.
- 19.5 The County Council shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Works pursuant to the Call-Off Contracts, save insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the County Council.
- 19.6 Subject to the County Council's rights of confidentiality, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including: -
- 19.6.1 all information requested by the Auditor within the scope of the Audit;
- 19.6.2 reasonable access to sites controlled by the Provider and to equipment used in the provision of the Works; and
- 19.6.3 access to the Staff.
- 19.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 19, unless the Audit reveals a Material Default by the Provider in

which case the Provider shall reimburse the County Council for the County Council's reasonable costs incurred in relation to the Audit.

20. CONFIDENTIALITY

20.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Framework Agreement, each Party shall:

20.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

20.2.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

20.2 Clause 20.1 shall not apply to the extent that:

20.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 21 (Freedom of Information);

20.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

20.2.3 such information was obtained from a third party without obligation of confidentiality;

20.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Framework Agreement;

20.2.5 such disclosure is reasonably required by Other Contracting Bodies; or

20.2.6 it is independently developed without access to the other Party's Confidential Information.

20.3 The Provider may only disclose the County Council's Confidential Information to its Staff who are directly involved in the provision of the Works and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

20.4 The Provider shall not, and shall procure that its Staff do not, use any of the County Council's Confidential Information received otherwise than for the purposes of this Framework Agreement.

20.5 At the written request of the County Council, the Provider shall procure that those members of the Staff identified in the County Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Framework Agreement.

20.6 Nothing in this Framework Agreement shall prevent the County Council from disclosing the Provider's Confidential Information:

- 20.6.1 to any Crown Body or any other Contracting Bodies. All Crown Bodies or Other Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or Other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or Other Contracting Body;
 - 20.6.2 to any consultant, contractor or other person engaged by the County Council or any person conducting an Office of Government Commerce gateway review;
 - 20.6.3 for the purpose of the examination and certification of the County Council's accounts;
 - 20.6.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the County Council has used its resources.
- 20.7 The County Council shall use all reasonable endeavours to ensure that any government department, County Council employee, third party or Sub-contractor to whom the Provider's Confidential Information is disclosed pursuant to clause 20.6.1 is made aware of the County Council's obligations of confidentiality.
- 20.8 Nothing in this Clause 20 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

21. FREEDOM OF INFORMATION

- 21.1 The Provider acknowledges that the County Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the County Council to enable the County Council to comply with its Information disclosure obligations.
- 21.2 The Provider shall and shall procure that its Sub-contractors shall:
- 21.2.1 transfer to the County Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
 - 21.2.2 provide the County Council with a copy of all Information in its possession, or power in the form that the County Council requires within five Working Days (or such other period as the County Council may specify) of the County Council's request; and
 - 21.2.3 provide all necessary assistance as reasonably requested by the County Council to enable the County Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

- 21.3 The County Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Framework Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 21.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the County Council.
- 21.5 The Provider acknowledges that (notwithstanding the provisions of Clause 21.2) the County Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Works:
- 21.5.1 in certain circumstances without consulting the Provider; or
 - 21.5.2 following consultation with the Provider and having taken their views into account;
 - 21.5.3 provided always that where 21.2 applies the County Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 21.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the County Council to inspect such records as requested from time to time.
- 21.7 The Provider acknowledges that the Commercially Sensitive Information listed in Schedule 5 is of indicative value only and that the County Council may be obliged to disclose it in accordance with clause 21.5.

22. DATA PROTECTION

- 22.1 For the purposes of this Clause 22, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meanings prescribed under the Data Protection Legislation.
- 22.2 The Provider shall (and shall procure that all of its Staff) comply with any notification requirements under the Data Protection Legislation and both Parties will duly observe all of their obligations under the Data Protection Legislation which arise in connection with this Framework Agreement.
- 22.3 Notwithstanding the general obligation in Clause 22.2, where the Provider is Processing Personal Data as a Data Processor for the County Council the Provider shall:-
- 22.3.1 Process the Personal Data only in accordance with instructions from the County Council as set out in this Framework Agreement;

- 22.3.2 comply with all applicable laws;
- 22.3.3 Process the Personal Data only to the extent, and in such manner as is necessary for the provision of the Provider's obligations under the provisions of this Framework Agreement;
- 22.3.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure;
- 22.3.5 take reasonable steps to ensure the reliability of its employees and agents who may have access to the Personal Data and use all reasonable endeavours to ensure that such persons have sufficient skills and training in the handling of Personal Data;
- 22.3.6 not cause or permit the Personal Data to be transferred outside the European Economic Area without the prior written consent of the County Council;
- 22.3.7 not disclose the Personal Data to any third parties in any circumstances other than with the written consent of the County Council or in compliance with a legal obligation imposed upon the County Council;
- 22.3.8 co-operate with the County Council to enable the County Council to comply with any request under article 15 of the GDPR.
- 22.3.9 notify the County Council within five Working Days if it receives:
 - (a) a request from a Data Subject to have access to that person's Personal Data; or
 - (b) a complaint or request relating to the County Council's obligations under the Data Protection Legislation.
- 22.4 The provisions of this Clause shall apply during the Term and indefinitely after its expiry.

23. PUBLICITY

- 23.1 The Provider shall not make any press announcements or publicise this Framework Agreement in any way without the County Council's prior Approval and shall take reasonable steps to ensure that its servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with this Clause.
- 23.2 The County Council shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon the County Council, including any examination of this Framework Agreement by the Auditor.
- 23.3 The Provider shall not do anything or cause anything to be done, which may damage the reputation of the County Council or bring the County Council into disrepute.

PART FOUR: FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

24. TERMINATION

Termination on Default

24.1 The County Council may terminate this Framework Agreement and any Call-Off Contracts under the Framework Agreement by serving written notice on the Provider: -

24.1.1 where the Provider commits a Material Default and: -

- (a) The Provider has not remedied the Material Default to the satisfaction of the County Council within twenty (20) Working Days, or such other period as may be specified by the County Council, after issue of a written notice specifying the Material Default and requesting it to be remedied; or
- (b) the Material Default is not, in the reasonable opinion of the County Council, capable of remedy,

such termination to be effective from the date specified in such notice.

Termination on Financial Standing

24.2 The County Council may terminate this Framework Agreement by serving notice on the Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the County Council), there is a material detrimental change in the financial standing and/or the credit rating of the Provider which adversely impacts on the Provider's ability to supply Works under this Framework Agreement.

Termination on Insolvency and Change of Control

24.3 Without affecting any other right or remedy available to it, the County Council may terminate this Framework Agreement with immediate effect by giving written notice to the Provider if:

24.3.1 the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;

24.3.2 the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its

creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;

24.3.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;

24.3.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);

24.3.5 the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;

24.5.6 a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Service Provider;

24.3.7 the Provider (being an individual) is the subject of a bankruptcy petition or order;

24.3.8 a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within fourteen (14) days;

24.3.9 any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 24.3.1 to clause 24.3.8 (inclusive);

24.3.10 the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

24.3.11 any warranty given by the other party in clause 10 of this Framework Agreement is found to be untrue or misleading.

24.4 The Provider shall notify the County Council immediately if the Provider undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 Section 416 (as amended or re-enacted) of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). the County Council may terminate the Framework Agreement by giving notice in writing to the Provider with immediate effect within six (6) Months of: -

24.4.1 being notified that a Change of Control has occurred; or

24.4.2 where no notification has been made, the date that the County Council becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

Termination by the County Council

- 24.5 The County Council shall in addition to any other rights it may have
- 24.5.1 have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving three (3) Months' written notice to the Provider at no cost to the Council; and
 - 24.5.2 have the right to terminate this Framework Agreement at any, or to terminate the provision of any part of the Framework Agreement at any time by giving one Months' written notice to the Provider when the number of Other Providers added to the Framework Agreement is less than two (2), at no cost to the Council.

25. SUSPENSION

- 25.1 The County Council may in its absolute discretion and upon notice suspend the award of any further Call-Off Contracts under the Framework Agreement to the Provider at any time during the Term for any of the following reasons:
- 25.1.1 failure to achieve with the minimum KPI requirements as set out in Schedule 9;
 - 25.1.2 failure to maintain the relevant Accreditation;
 - 25.1.3 the Provider fails to deliver the executed Call Off Contract;
 - 25.1.4 the Provider breaches the Framework Agreement and/or any Call Off Contract, which is not considered a Material Default, t twice in a rolling twelve (12) month period during the Term;
 - 25.1.5 in the event the Customer evidences poor workmanship by the Provider on a Call-Off Contract which does not justify termination of the Framework Agreement in accordance with clause 24.1 of this Framework Agreement; or
 - 25.1.6 as detailed in clause 9.5 of this Framework Agreement
- 25.2 The notice to the Provider sent in accordance with clause 25.1 will detail the reason for the suspension and the length of the suspension of the Provider from the award of any Call-Off Contracts under the Framework Agreement. The suspension will take effect upon deemed service of the notice by the County Council in accordance with clause 35.2.
- 25.3 The Provider may suspend itself from the award of any further Call-Off Contracts under the Framework Agreement upon notice to the County Council. Such notice shall detail the anticipated length of the suspension. The suspension shall take effect upon the deemed service of the notice in accordance with clause 35.2

26. CONSEQUENCES OF TERMINATION AND EXPIRY

- 26.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Provider shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this Clause 26.
- 26.2 Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically unless specified. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 26.3 Within thirty (30) Working Days of the date of termination or expiry of the Framework Agreement, the Provider shall return to the County Council any data and Confidential Information belonging to the County Council in the Provider's possession, power or control, either in its then current format or in a format nominated by the County Council (in which event the County Council will reimburse the Provider's reasonable data conversion expenses),

together with all training manuals and other related documentation, and any other information and all copies thereof owned by the County Council, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance.

26.4 The County Council shall be entitled to require access to data or information arising from the provision of the Works from the Provider until the latest of:-

26.4.1 the expiry of a period of twelve (12) Months following termination or expiry of the Framework Agreement; or

26.4.2 the expiry of a period of three (3) Months following the date on which the Provider ceases to provide Works under any Call-Off Contract.

26.5 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.

26.6 The provisions of:

26.6.1 Clause 10 (Warranties and Representations);

26.6.2 Clause 11 (Corrupt Gifts and Payments of Commission);

26.6.3 Clause 12.4 (for 2 years after expiry or termination);

26.6.4 Clause 18 (Provisions of Management Information);

26.6.5 Clause 19 (Records and Audit Access);

26.6.6 Clause 20 (Confidentiality);

26.6.7. Clause 21 (Freedom of Information);

26.6.8 Clause 22 (Data Protection);

26.6.9 Clause 26 (Consequences of Termination and Expiry);

26.6.10 Clause 27 (Liability);

26.6.11 Clause 28 (Insurance);

26.6.12 Clause 31 (Rights of Third Parties); and

26.6.13 Clause 36 (Dispute Resolution).

shall survive the termination or expiry of this Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

26.7 For the avoidance of doubt, upon termination of this Framework Agreement the Provider shall freely and fully co-operate with the County Council in providing all documents, information and support in the transfer of this Framework Agreement and any Call-Off Contracts to a replacement

provider in order that the Works can continue to be effected in an efficient and timely manner. For this purpose the County Council may disclose to such replacement provider all necessary information as to the performance by the Provider of its service delivery hereunder and the Provider hereby authorises the County Council to disclose to any replacement provider any Confidential Information but shall take reasonable steps to ensure that the replacement provider enters into a suitable confidentiality undertaking in relation thereto.

PART FIVE: INSURANCE AND LIABILITY

27. LIABILITY

27.1 Neither Party excludes or limits its liability for:-

27.1.1 death or personal injury caused by its negligence, or that of its Staff;

27.1.2 fraud or fraudulent misrepresentation by it or its Staff; or

27.1.3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (in each case as amended or re-enacted).

27.2 The Provider shall indemnify and keep indemnified the County Council in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Framework Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider. This Clause shall not apply to the extent that the Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Staff or by any circumstances within its or their control.

28. INSURANCE

28.1 The Provider shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Provider under this Framework Agreement and all Call-Off Contracts including death or personal injury, or loss of or damage to property.

28.2 The Provider shall effect and maintain the following insurances for the Term and for a period of twelve years thereafter in relation to the performance of the Framework Agreement and all the Call-Off Contracts:-

28.2.1 public liability insurance adequate to cover all risks in the performance of this Framework Agreement from time to time with a minimum limit of Five million pounds (£5,000,000.00) for any occurrences arising out each and every event such higher limit as the County Council may reasonably require (or as required by law) from time to time;

28.2.2 employers' liability insurance with a minimum limit of Ten million pounds (£10,000,000.00) for any occurrences arising out of each and every event or such higher limit as the County Council may reasonably require (or as required by law from time to time; and

- 28.2.3 in respect of any design or other professional services, professional indemnity insurance with a minimum limit of indemnity of five million pounds £5,000,000 for any occurrences arising out of each and every event or such higher limit as the County Council may reasonably require (or as required by law from time to time).
- 28.2.4 Product liability insurance with a minimum limit of five million pounds (£5,000,000.00) for any occurrences arising out of each and every event or such higher limit as the County Council may reasonably require (or as required by law from time to time).
- 28.3 Any excess or deductibles under such insurance (referred to in Clause 28.1 and Clause 28.2) shall be the sole and exclusive responsibility of the Provider.
- 28.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities arising under the Framework Agreement.
- 28.5 The Provider shall produce to the County Council, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 28.6 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the Framework Agreement then the County Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 28.7 The Provider shall maintain the insurances referred to in Clause 28.1 and Clause 28.2 for a minimum of twelve (12) years following the expiration or earlier termination of the Framework Agreement.

PART SIX: OTHER PROVISIONS

29. TRANSFER AND SUB-CONTRACTING

- 29.1 This Framework Agreement is personal to the Provider and the Provider shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of the County Council. The Provider shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement.
- 29.2 The County Council shall be entitled novate this Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the County Council provided that such novation shall not increase the burden of the Provider's obligations under this Framework Agreement.
- 29.3 Should the Provider vexatiously disagree with such novation, then the matter may be settled by a binding mediation.

30. VARIATIONS TO THE FRAMEWORK AGREEMENT

Any variations to this Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in Schedule 6.

31. RIGHTS OF THIRD PARTIES

- 31.1 Except as provided in clause 9 or as expressly provided by this Framework Agreement a person who is not party to this Framework Agreement ("**Third Party**") has no right to enforce any term of this Framework Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this Framework Agreement or vary any of its terms in accordance with the relevant provisions of this Framework Agreement, such rescission or variation will not require the consent of any Third Party.
- 31.2 This clause shall not apply to paragraphs 4 and 6 of Schedule 8 (TUPE) which may be enforced directly by the Relevant Employees (as defined in Schedule 8).

32. SEVERABILITY

- 32.1 If any provision of this Framework Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Framework Agreement had been executed with the invalid provision eliminated.
- 32.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Framework Agreement, the County

Council and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

33. CUMULATIVE REMEDIES

Except as otherwise expressly provided by the Framework Agreement, all remedies available to either Party for breach of the Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

34. WAIVER

34.1 The failure of either Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Framework Agreement.

34.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 35.

34.3 A waiver of any right or remedy arising from a breach of this Framework Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Framework Agreement.

35. NOTICES

35.1 Except as otherwise expressly provided within this Framework Agreement, no notice or other communication from one Party to the other shall have any validity under the Framework Agreement unless made in writing by or on behalf of the Party sending the communication.

35.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail. Such notices and communications shall be addressed to the other Party in the manner referred to in Clause 35.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or one (1) hour, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

35.3 For the purposes of Clause 35.2, the address of each Party shall be:

35.3.1 For the County Council:-

Address:

Staffordshire County Council

Address: No. 2 Staffordshire Place, Tipping Street, Stafford ST16 2DH

For the attention of: Mr. Jason Wilkinson

Tel: 01785 854050

E-mail: jason.wilkinson@staffordshire.gov.uk

35.3.2 For the Provider:- MIDLANDS BUILDING & MAINTENANCE LIMITED

Address:

Newtown Industrial Estate, Tewkesbury, GL20 8JG

For the attention of: Andy Rhodes-Smith

Tel: 01684 423211

Email: andy@midlandsbm.co.uk

35.4 Either Party may change its address for service by serving a notice in accordance with this Clause.

36. DISPUTE RESOLUTION

36.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Framework Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to those persons identified in Clause 35 above.

36.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

36.3 If the dispute cannot be resolved by the Parties pursuant to Clause 36.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 36.5 unless:-

39.3.1 The County Council considers that the dispute is not suitable for resolution by mediation; or

39.3.2 The Provider does not agree to mediation.

36.4 The obligations of the Parties under this Framework Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Provider and its employees, personnel and associates shall comply fully with the requirements of this Framework Agreement at all times.

36.5 The procedure for mediation and consequential provisions relating to mediation are as follows: -

36.5.1 a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, either Party may apply to the

President for the time being of the Royal Institution of Chartered Surveyors to appoint a Mediator;

- 36.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held;
- 36.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 36.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 36.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Framework Agreement without the prior written consent of both Parties; and
- 36.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

37. TUPE

- 37.1 The Parties agree that the provisions of Schedule 8 (TUPE) will have effect in relation to all TUPE matters arising under this Agreement and under each applicable Call-Off Contract, save as otherwise agreed between the Parties in writing.
- 37.2 The Provider shall remain responsible for all Losses incurred by the County Council as a result of the expiry of this Framework Agreement or Call-Off Contract, including, but not limited to, any costs associated with the application of TUPE to this Framework Agreement or Call-Off Contract.

38. DBS

Where reasonably requested by the Customer the Provider shall comply with the County Council's requirements relating to the DBS and the provisions of Schedule 7 (DBS) shall apply to this Framework Agreement.

39. LAW AND JURISDICTION

Subject to the provisions of Clause 36 the County Council and the Provider accept the exclusive jurisdiction of the English courts and agree that the Framework Agreement is to be governed by and construed according to English Law.

40. BUSINESS CONTINUITY

- 40.1 The Provider shall implement a robust and viable Business Continuity Plan that ensures the continuation of the fulfilment of its obligations under this Framework Agreement and any Call Off Contract throughout the Term in accordance with the requirements of the Civil Contingencies Act 2004.
- 40.2 The Provider shall ensure that its Business Continuity Plan includes:
- 40.2.1 an introduction identifying the purpose of the Business Continuity Plan, its limitations and exclusions, and the individual members of Staff responsible for implementing the Business Continuity Plan;
 - 40.2.2 the clear aims and objectives that the Business Continuity Plan will achieve;
 - 40.2.3 the tasks and activities of the Provider's business and the risks associated with each of these tasks and activities;
 - 40.2.4 a full description of the policies, processes and procedures which are in place to support the Business Continuity Plan;
 - 40.2.5 the roles and responsibilities of the Provider, its Staff and its partners in implementing the Business Continuity Plan;
 - 40.2.6 the command and control arrangements which will operate to support the effectiveness of the Business Continuity Plan;
 - 40.2.7 the communications arrangements that will ensure that the Business Continuity Plan is widely understood by Staff and so that a business continuity management culture is embedded within the Provider's business in relation to the Works; and
 - 40.2.8 a schedule detailing when the Business Continuity Plan was last reviewed, how and when the actions within the Business Continuity Plan will be tested, reviewed and updated by the Provider each year.
- 40.3 The Provider shall:
- 40.3.1 upon request by Notice from the County Council, disclose to the County Council the contents of its Business Continuity Plan (include any revisions made to it from time to time during the Term);
 - 40.3.2 allow the County Council (at its discretion) from time to time during the Term to monitor the Provider's business continuity arrangements;
 - 40.3.3 serve Notice on the County Council immediately if an incident occurs which activates the Business Continuity Plan (such notification to be served prior to the issue by the Provider of any notification to the press or other media); and
 - 40.3.4 provide the County Council with details of how the Provider managed any incident which resulted in the activation of its

Business Continuity Plan and any consequential amendments made by the Provider to the processes and/or procedures which are contained in or referred to in the Business Continuity Plan.

Executed as a Deed by the Parties on the date which first appears in this Framework Agreement

**THE COMMON SEAL of
STAFFORDSHIRE COUNTY COUNCIL**

was affixed in the presence of:

Authorised Signatory

Signature

Name

Executed as a deed by

By:

Director Signature

Director Name

Director Signature

Director Name

On behalf of MIDLANDS BUILDING & MAINTENANCE LIMITED

SCHEDULE 1

WORKS

SCHEDULE 2

PRICING MATRICES

SCHEDULE 3

ORDER FORM

FROM

Customer:	
Service address:	
Invoice address:	
Authorised Representative:	Ref: Phone: E-mail:
Order number:	To be quoted on all correspondence relating to this Order:
Order date:	

TO

Provider:	MIDLANDS BUILDING & MAINTENANCE LIMITED
For the attention of:	Andy Rhodes-Smith
E-mail:	andy@midlandsbm.co.uk
Telephone number:	01684 423211
Address:	Newtown Industrial Estate, Tewkesbury, GL20 8JG

1. WORKS REQUIREMENTS

(1.1) Works required:

(1.2) Works Commencement Date:

(1.3) Price payable by Customer and payment profile:

(1.4) Completion date (including any extension period or periods):

2 [MINI-COMPETITION ORDER: ADDITIONAL REQUIREMENTS

(2.1) Supplemental requirements in addition to Call-off Terms and Conditions:

(2.2) Variations to Call-off Terms and Conditions:

3. PERFORMANCE OF THE WORKS

(3.1) Key personnel of the Provider to be involved in the Works:

(3.2) Performance standards:

(3.3) Location(s) at which the Works are to be provided:
(3.4) Quality standards:
(3.5) Contract monitoring arrangements:
(3.6) Management Information and meetings
4. CONFIDENTIAL INFORMATION
(4.1) The following information shall be deemed Confidential Information:
(4.2) Duration that the information shall be deemed Confidential Information:

BY SIGNING AND RETURNING THIS ORDER FORM THE PROVIDER AGREES to enter a legally binding contract with the Customer to provide to the Customer the Works specified in this Order Form (together with, where completed and applicable, the mini-competition order (additional requirements) set out in this Order Form) incorporating the rights and obligations in the Call-Off Terms and Conditions set out in the Framework Agreement entered into by the Provider and the County Council on

Name and title	
Signature	
Date	
Provider's Authorised Representative for the Contract (if different)	

For and on behalf of the Customer:

Name and title	
Signature	
Date	

SCHEDULE 4

CALL OFF TERMS AND CONDITIONS

Part One

JCT Design and Build 2024 Edition with amendments (stand alone document together with its schedules and annexures i.e. contractor collateral warranties, employer's requirements, sub-contractor warranties, professional appointments warranties, employer's policy, KPI, DPA, deed of novation, parent company guarantees, performance bond etc)

Part Two

CERTIFICATION CHECKLIST

Project:		File Ref:			
COMPLETION CHECKLIST – CERTIFICATION / COMMISSIONING (ELECTRICAL)					
	Required Y/N	Supplied by			
		Lead Officer	Principal Contractor	Engineer	
Original 17 th edition completion and inspection certificate in accordance with BS7671:2008 Appendix 6					
Schedules of test results per distribution board in accordance with BS7671:2008 Appendix 6					
Original BS:5839:Part 1:2002 Appendix G model certificate of design for the fire alarm system (G1 – signed and dated)					
Original model certificate of installation for the fire alarm system (G2) in accordance with BS5839 Part 1:2002 Appendix G					
Original certificate of commissioning for the fire alarm system (G3) in accordance with BS5839 Part 1:2002 Appendix G					
Original model certificate of acceptance for the fire alarm system (G4) in accordance with BS5839 Part 1:2002 Appendix G					
Original BS:5266:2005 emergency lighting completion certificate for new installations or alterations (signed and dated)					
Specialist equipment certificates:					
Original NACOSS certificate for intruder alarm					
Original automatic fire alarms commissioning certificate					
Original test/commissioning lift installation certificate and lift operating and maintenance manual, original lifting gear (load testing certificate)					
Original lightning protection certificate					
Original CCTV installation certificate					
Original generator installation certificate					
Original call systems certificate					
Original PA systems certificate					
Original UPS systems certificate					
Original compressor equipment certificate					

COMPLETION CHECKLIST– CERTIFICATION / COMMISSIONING (MECHANICAL)				
	Required Y/N	Supplied by		
		Lead Officer	Principal Contractor	Engineer
Original certificate of chlorination/disinfection of hot and cold water installations				
Original bacterial analysis report on water samples				
Original commissioning certificate for thermostatic mixing valves				
Original pressure test certificates for hot and cold water systems				
Water supply (water fittings) Regulations 2000 Contractors certificate				
<i>Specialist equipment certificates:</i>				
Original commissioning certificate for ventilation systems (air handling units/ducted systems)				
Original commissioning certificates of heating plant installations (boilers etc)				
Original certificates for air conditioning plant installations				
Original commissioning certificates for unvented water heaters (25 litres and above)				
Original pressure test certificates for under floor heating installations				
Original gas safety testing and purging certificate (IGE UP11 – educational premises) – (IGE UP1 – commercial premises)				
Original gas interlock certificate (kitchen canopies)				
Original pressure test results for gas pipe work				
Original Certificate for fire ventilation system				
Heating installation certificate for mechanical engineering compliance with part L2				

COMPLETION CHECKLIST – CERTIFICATION / COMMISSIONING (BUILDING FABRIC)				
	Required Y/N	Supplied by		
		Lead Officer	Principal Contractor	Engineer
Fire door/shutter certification				
Certificate for intumescent coatings				
Certificate for specialist fire resistant glazing systems				
Loading certificates for operational fixing and lifting devices Specify: Window cleaners rigs, safety harness fixing, lifting beams etc.				

Part Three
DRAWING LIST

Part Four

PARENT COMPANY GUARANTEE

Stand alone document incorporated as part of JCT design and Build 2024 Edition with amendments.

PART Five

FORM OF – PERFORMANCE BOND

Stand alone document incorporated as part of JCT Design and Build 2024 Edition with amendments.

Part Six

WARRANTIES

Stand alone documents incorporated as part of JCT Design and Build 2024 Edition with amendments.

Part Seven

Public Sector Amendments

A General

The Provider repeats the information which it provided in the selection questionnaire and within its tender and the Provider confirms and warrants the content, veracity and accuracy of such information as it has so provided.

B Status as a Local Authority

No provision of this Contract shall prevent, prejudice or affect the Employer's rights, powers, duties and obligations in relation to the exercise of its functions as a local authority and nothing herein shall have the effect of fettering or limiting the Employer in that regard.

C Data Protection Legislation

The Provider shall carry out the Works in a manner which is consistent with the Data Protection Legislation and the Provider must adhere to the Employer's information sharing protocol. Personal data should be processed and held in accordance with the principles of the Data Protection Act Legislation.

D Freedom of Information Act, 2000

- 1 The Provider understands and acknowledges that the Employer is (and the Provider may be) subject to the provisions of the Freedom of Information Act 2000 ("FOI Act").
- 2 In this Clause 'Information' has the meaning given to it in Section 84 of FOI Act and includes all records and information obtained, collected or held by the Provider in relation to or created pursuant to this Contract (including this Contract itself) and a 'Request for Information' means a request for information as defined in Section 8 of FOI Act
- 3 When submitting a tender submission or agreeing the terms of this Contract, the Provider may identify in writing, information which it considers to be commercially sensitive, a trade secret or confidential, in which case the Employer may consult with the Provider before releasing the information and have due regard to the Provider's comments or objections.
- 4 If the Provider receives any request for Information pursuant to FOI Act (regardless of whether such request complies or does not comply with the strict requirements of FOI Act) it shall:
 - 4.1 make no response to such request other than a bare acknowledgement of receipt stating that the request has been passed to the Employer; and
 - 4.2 pass such request to the Employer within 2 Working Days of the request being made to the Provider; and
 - 4.3 provide the Employer with a copy of all Information required to comply with any Request for Information and such Information shall be provided within 10 days of a request from the Employer (or such other period as the Employer shall specify) and in such form as the Employer may specify; and
 - 4.4 take no further action in regard to such request save at the direction of the Employer.
- 5 The Provider shall upon request by the Employer (and within such period as the Employer may specify) provide the Employer with all assistance and Information under its control and to cooperate with the Employer to enable the Employer to respond to a request for Information within the time for compliance prescribed by FOI Act.
- 6 The Provider understands and acknowledges that the Employer may be obliged under FOI Act

to disclose Information without consulting or obtaining consent from the Provider. The Employer shall be responsible (in its sole and unfettered discretion) for deciding:

- 6.1 what Information is to be disclosed pursuant to a request for Information (regardless of whether such Information originates from the Employer or the Provider); and
- 6.2 what Information (if any) is exempt from disclosure pursuant to FOI Act; and
- 6.3 the Information to be disclosed in response to a Request for Information; and
- 6.4 whether or not to include any category of Information in its publication scheme;

and for the avoidance of doubt the Employer may, pursuant to a Request for Information, disclose all information and documentation, in whatever form, as necessary to respond to that Request for Information.

- 7 The Provider acknowledges that the provisions of this Clause D and of the FOI Act shall override any obligation of confidentiality as between the Employer and the Provider and that the Employer may be obliged to disclose Information without consulting the Provider or having consulted the Provider but in opposition to the views of the Provider and the provisions of this Clause shall take precedence over any clause or condition requiring the Employer to hold information in confidence.
- 8 Each party shall bear its own costs of compliance with this Clause D and the Employer and the Provider shall bear their own respective costs in relation to any disclosure under FOI Act.
- 9 If the Employer at the Provider's request seeks to rely upon a FOI Act exemption, the Provider shall indemnify the Employer for any costs, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner. The Provider shall also indemnify the Employer and hold it harmless from and against all liability, costs, claims, actions, losses, damages and expenses whatsoever, arising directly or indirectly as a result of any decision by the Information Commissioner that information which the Provider may regard as being confidential shall be disclosed under the FOIA or other appropriate legislation or codes of practice.
- 10 The Provider shall notify every member of the design team and every sub-contractor of the provisions of this clause and every appointment and sub-contract shall contain like terms as to this Clause entitling the Employer to provision of information held by a design team member or a sub contractor as if the information related to the Provider or this Contract.
- 11 The Provider shall indemnify the Employer against all losses incurred in this by the Employer as a result of any breach of this Clause by the Provider.
- 12 The Employer shall not be liable for any loss, damage, harm or other detriment, however caused, arising from any disclosure made pursuant to a Request for Information.
- 13 Failure by the Provider to comply with any of the provisions of this Clause D shall be a default.

E Provision of Information

- 1 The Provider shall provide, following a written request and within timescales specified by the Employer, such information as may reasonably be requested from time to time in connection with the Works.
- 2 The Provider will ensure it has a records management system in place to effectively monitor the performance of the Contract and that the system is accurately maintained at all times and checked at regular intervals. The Provider will afford to the Employer access to the relevant information, or provide the requested information to enable the Employer to effectively monitor the provision of the Works. The Provider will also

ensure the provision of information to the Employer to enable the Employer to meet its statutory obligations.

- 3 The Provider shall ensure that it records all representations or complaints received in connection with the Works, whether orally or in writing, from any source and shall detail the action taken by the Provider in respect of each such representation or complaint.
- 4 Unresolved representations or complaints received by or referred to the Employer may be investigated by the Employer and may result in a default notice being served and in this respect the Employer shall have the right to interview any member of staff of the Provider in connection with the Works.
- 5 The Provider shall immediately submit to the Employer a report (together with photocopies of all relevant documents) of any incidents notified to the Health and Safety Executive, the local environmental health department, and the Police or any other statutory or regulatory agency and shall immediately supply to the Employer a copy of any notices served upon it by any of them or by any other statutory or regulatory agency.

F Ombudsman's Investigations

- 1 The Employer is under a legal obligation by virtue of the Local Government Acts to observe the rights and powers of the Local Government and Social Care Ombudsman who can require the provision of information and production of documents for the purpose of carrying out investigations into relevant matters that may have been referred to him for adjudication when maladministration has been alleged against the Employer.
- 2 The Provider shall make available any documentation or allow to be interviewed any of its Staff and at all times assist the Ombudsman or his staff and shall co-operate with any enquiries that are requested by the Ombudsman or his staff in investigating any complaint.
- 3 Upon determination of any case by the Ombudsman in which the Provider has been involved or been implicated the Employer shall forward copies of those determinations to the Provider for the Provider's comments before reporting the details to the committees of the Employer. Should the Ombudsman make recommendations in his report that compensation should be paid for maladministration and this either expressly or by implication has been due wholly or in part to the failure of the Provider in not complying with the provisions of this Contract, the Employer may recover such compensation in full from the Provider.
- 4 The Provider shall comply with all recommendations made by the Ombudsman as to changes in methods or procedures for delivery of the Works if requested to do so in writing by the Employer.

G Gratuities

- 1 The Provider shall not and nor shall any of its Staff solicit or accept any gift, gratuity, tip, bequest, legacy or any other form of money, taking or reward, collection, or charge for any part of the Works.
- 2 If any such receipt is received by the Provider or by any staff that it engages in the provision of the Services the Provider shall promptly enter the details of the receipt into a hospitality book that the Provider must keep at its local office, specifically as a record for that purpose and the Employer will be entitled to reasonable access in order to inspect the Hospitality Book or similar record.

H Equal Opportunities

- 1 The Provider shall comply with the requirements of race relations, sex discrimination, disability discrimination, age discrimination and equal opportunities legislation and not to discriminate against any person or organization nor any supplier on the grounds of

race, gender, sexual orientation, disability, age or religious preference, unless they are exempt under any legislation on religious grounds.

- 2 The Provider shall inform the Employer as soon as it becomes aware of any legal proceedings (whether civil or criminal) brought against the Provider and relating to the Works under race relations, equal opportunities, sex discrimination, age discrimination or disability discrimination legislation, or of any judgments, awards, convictions, or settlements arising therefrom, and shall provide the employer with such further information and documentation as may be required in relation thereto.
- 3 In this context the Provider shall abide by and comply with the provisions of the Equality Act 2010.

I Diversity and Equality

The Provider shall adopt a Diversity and Equality Policy, being a policy that values diversity and equality and sets out how the Provider promotes equality and diversity, opposing all forms of intolerance and prejudicial discrimination, whether intentional, institutional or unintentional within their workforce. The Provider and its staff shall comply with the Diversity and Equality Policy and in this regard the Provider shall likewise abide by and comply with the provisions of the Equality Act 2010.

J Human Rights Act, 1998

The Provider shall carry out the Works in a manner which is consistent with the Human Rights Act, 1998, and the European Convention on Human Rights as though it were bound by the Act and in such a way that the Provider's acts or omissions shall not constitute, cause or contribute to any breach of the Employer's duties under the Act and the Provider shall indemnify the Employer against any losses incurred or suffered by the Employer arising from or in relation to any resulting breach of the Act by the Employer or alleged breach of the Act by the Provider.

K Modern Slavery

- 1 The Providers shall comply with the obligations set out in the Modern Slavery Act 2015. If any breach of this provisions is suspected or known, the Providers shall immediately notify the Employer in writing if:
 - 1.1 it has committed an offence under the Modern Slavery Act 2015 (a "**MSA Offence**"); or
 - 1.2 it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - 1.3 is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
 - 1.4 if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or Sub-contractors have, breached or potentially breached any of the Provider's obligations under this provision. Such Notice shall set out full details of the circumstances concerning the breach or potential breach of the Provider's obligations and the steps to ensure slavery and human trafficking are not taking place.
- 2 The Employer shall act in a reasonable and proportionate manner having regard to such matters as to the seriousness of the breach.
- 3 The Employer may terminate the Framework Agreement and this Contract by written notice if the Provider or any of its Staff (in all cases whether or not acting with the Provider's knowledge) breaches this provision. In determining whether to exercise the right of termination the Employer shall give due consideration where appropriate to action other than terminate the Framework Agreement and this Contract.

L Whistleblowing

The Provider shall have a written whistleblowing policy. The Provider shall ensure that this policy is available to all of its staff and shall send a copy of its Whistleblowing Policy to the Employer within 7 days of the Commencement Date of this Contract.

M No Agency

Neither the Provider nor its Staff shall in any circumstances, hold the Provider out as being the servant or agent of the Employer otherwise than in circumstances expressly or implicitly permitted by this Contract; or as being authorised to enter into any contract on behalf of the Employer or in any other way to bind the Employer to the performance, variation, release or discharge of any obligation otherwise than in circumstances expressly or implicitly permitted by this Contract; or as having the power to make, vary, discharge or waive any by-law or regulation of any kind.

N Legal proceedings and Provision of Information

- 1 Immediately upon becoming aware of any legal proceedings (or threat of legal proceedings) relating or in any way connected to the subject matter hereof the Provider shall inform the Employer of such legal proceedings. If such notification is given orally it shall subsequently be communicated to the Employer in writing within 2 Working Days of any oral notification given.
- 2 At the Employer's request, the Provider shall provide any relevant information in connection with any legal inquiry, arbitration, court, tribunal or other proceedings or inquiry in which the Employer may become involved or any relevant disciplinary hearing convened by the Employer arising out of the provision of the Works, and the Provider and its staff shall give evidence at such inquiries or proceedings or hearings as required.
- 3 The assistance that the Provider gives in accordance with Sub-Clause 2 shall be provided at the Provider's own cost where the matter for which assistance is requested has arisen in respect of the Contract and relates to any act or omission on the part of the Provider.
- 4 In all other cases the Employer shall pay the Provider's reasonable costs that it incurs in providing such assistance.

O Provider's Staff

- 1 The Provider shall at all times during the Contract period employ and use, so as to deliver the Works, only such persons who are properly qualified, sufficiently trained, suitable, competent, careful, skilled, honest, reliable, experienced and supervised.
- 2 The Provider shall not employ any person who remains in receipt of statutory unemployment benefit following their engagement or whose visa status relating to employment in the United Kingdom is in question.
- 3 The Employer may issue written instructions to the Provider requiring the immediate exclusion from the provision of the Works of any staff and the Provider shall forthwith remove such person and immediately provide a replacement. The written instruction should give full disclosure as to the reasons why the Employer requires the immediate exclusion of the person who not be reinstated without the Employer's prior written consent.
- 4 The Employer shall have full liberty and power to instruct the Provider to discharge or remove a member of staff thereon who may appear to the Employer to be incompetent or act in an improper, oppressive, discriminatory or harassing manner towards the Employer's staff, users of the centre or members of the public. Failure to respect special needs of oppressed groups (for example, access for disabled people, special cultural or religious needs) will entitle the Employer to instruct the Provider to exclude

any persons responsible. Where necessary the Provider shall bring into force its disciplinary procedures. If after investigation, a finding is made against that member of staff, such person shall not be permitted to continue without the prior written approval of the Employer.

P Compliance and Monitoring

The Provider shall, at all reasonable times during the Contract Period, allow the Employer access to all records and documents in the possession of the Provider specifically relating to the performance of this Contract and shall permit and assist the Employer and any other appropriate body in carrying out any audit.

Q Corrupt Practices

The Employer shall be entitled to cancel the Contract and to recover from the Provider the amount of any loss resulting from such cancellation if the Provider shall have offered or given or agreed to offer or to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or the execution of the Contract or any other contract with the Employer or if the like acts shall have been done by any person employed by the Provider or acting on its behalf (whether with or without the knowledge of the Provider) or if in relation to any contract with the Employer the Provider or any person employed by him or acting on his behalf shall have committed any offence under the Bribery Act 2010, or any amendment thereof or shall have given any fee or reward, the receipt of which is an offence under the Local Government Act 1972.

R Competition Act

- 1 Where any relevant body declares any provision of this agreement to be invalid or otherwise raises any lawful objection to the same (including but not limited to under UK rules the parties agree to discuss any such objections in good faith and with a view to amending or replacing the offending provision so as to render it acceptable to the relevant body and the parties hereby agree to do all such acts and things and to execute all such deeds and documents as may be required so as to give effect to this.
- 2 The parties also hereby agree (and warrant to each other) that as between themselves they have not acted in a manner intended to prevent or restrict or distort competition nor to the use of a dominant market position, contrary to the provisions of the Competition Act, 1998.

S Financial Curtailment

- 1 Any and all funding or payments to be provided or made by the Employer hereunder which:
 - are dependent (directly or indirectly) upon receipt or availability, or continued receipt or availability, of finance from central government, but such finance ceases to be receivable or available; and/or
 - are or become limited or no longer payable in the same amounts or at all by reason of central government impositionsshall, at the absolute and unfettered discretion of the Employer, no longer be bound or required to be paid by the Employer to the recipient.
- 2 It is acknowledged, understood and agreed that in so far as may be validly permitted by law the Employer shall not be in breach or default of its duties and obligations hereunder and nor shall it be guilty of any tort, breach of statutory duty or other cause of action by reason of the implementation or impact of this provision.
- 3 Further the Employer shall have no indebtedness or liability whatsoever or howsoever for any loss, damage, expense, action, claim or demand by reason of the operation of or reliance upon this provision.

- 4 The Employer shall be entitled to immediately determine this Contract by notice in which case the Provider shall receive payment for that part of the Works undertaken up to the time and date of service of such notice but it shall have no claim in respect of the remainder of the Works for loss of profit, wasted expenditure, overhead or expenses which would otherwise be defrayed over the course of the whole of the project.

T Best Value

The Provider acknowledges that the Employer is, pursuant to the Local Government Act, 1999, under a continuing duty to achieve Best Value in the performance of its services and functions. The Provider agrees to support and co-operate in complying with that continuing duty and agrees to comply with all requests of the Employer reasonably made towards achieving that objective, subject, where there are material financial consequences (whether favourable or unfavourable) to either party arising therefrom, to agreement being reached between the parties as to the bearing and sharing of those financial consequences.

V Social Value

In order to meet the Public Services (Social Value) Act 2012, the Provider is required to both support and actively demonstrate its commitment to developing, encouraging and investing in the skills and development within the construction industry (e.g. through school and other educational establishment class presentations, careers fairs, apprenticeships, work experience etc) within the Providers own organisation and/or their supply chain. The Provider is also encouraged to deliver on the wider remit of Social Value where relevant to this Framework Agreement and, as a minimum, is sign-posted to Staffordshire County Councils 2018-2022 Strategic Plan, or any other County Council policy, on its website for such relevant objectives.

SCHEDULE 5

COMMERCIALLY SENSITIVE INFORMATION

No commercially sensitive information.

SCHEDULE 6

FRAMEWORK AGREEMENT VARIATION PROCEDURE

1. Introduction

- 1.1 This Schedule 6 details the scope of the variations permitted and the process to be followed where the County Council proposes a variation to the Framework Agreement.
- 1.2 The County Council may propose a variation to the Framework Agreement under this Schedule 6 only where the variation does not amount to a material change in the Framework Agreement or the Works.

2. Procedure for proposing a Variation

- 2.1 Except where paragraph 4 of this Schedule applies, the County Council may propose a variation using the procedure contained in this paragraph 2 of this Schedule
- 2.2 In order to propose a variation, the County Council shall serve each of the Provider and the Other Providers with written notice of the proposal to vary this Framework Agreement and the Other Framework Agreements ("Notice of Variation").
- 2.3 The Notice of Variation shall:-
 - 2.3.1 contain details of the proposed variation providing sufficient information to allow each of the Provider and the Other Providers to assess the variation and consider whether any changes to the prices set out in its Pricing Matrices are necessary; and
 - 2.3.2 require each of the Provider and the Other Providers to notify the County Council within twenty (20) Working Days of any proposed changes to the prices set out in its Pricing Matrices.
- 2.4 Upon receipt of the Notice of Variation, each of the Provider and the Other Providers has twenty (20) Working Days to respond in writing with any objections to the variation.
- 2.5 Where the County Council does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the County Council may then serve each of the Provider and the Other Providers with a written agreement detailing the variation to be signed and returned by each of the Provider and the Other Providers within ten (10) Working Days of receipt.
- 2.6 Upon receipt of a signed agreement the Provider the County Council shall notify the Provider in writing of the commencement date of the variation.
- 3.1 Objections to a Variation or Proposed Changes to Pricing Matrices**
- 3.1 In the event that the County Council receives one or more written objections to a variation or a proposal to change Pricing Matrices, the County Council must:-
 - 3.1.1 either withdraw the proposed variation; or

- 3.1.2 propose an amendment to the variation and the provisions of this Schedule shall then apply to the proposed variation as amended (mutatis mutandis)

4 Variations which are not permitted

- 4.1 In addition to the provisions contained in paragraph 1.2 of this Schedule, the County Council may not propose any variation which: -

- 4.1.1 may prevent one or more of such of the Provider or the Other Providers from performing their obligations under the Framework Agreement; or

- 4.1.2 is in contravention of any Law.

SCHEDULE 7

DBS SCHEDULE

1. Definitions

In these additional conditions:

Barred List: the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006 (as may be amended or re-enacted from time to time).

CBO: a minimal behaviour order as defined in the Anti-Social Behaviour Crime and Policing Act 2014.

Convictions: other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order).

Disclosure and Barring Scheme: the disclosure and barring scheme operated by the Disclosure and Barring Service.

Disclosure and Barring Service: means the non-departmental public body established pursuant to the Protection of Freedoms Act 2012.

Educational Services: the provision of teaching and pastoral support for school age children, the provision of careers advice, liaison with parents and guardians of pupils and the carrying on of extra-curricular activities for pupils and the use of educational accommodation by the local community.

Enhanced with Lists Check: the check carried out by the Disclosure and Barring Service that also includes a check of the Barred Lists.

Named Employee: has the meaning set out in clause 2.1 of this Contract.

Sensitive Works: the carrying out of any part of the *Works* (including the making good of any defects) in or on any part or parts of the Site which may allow direct access to premises occupied or used, during the course of the *Works* (including the making good of any defects) by children or vulnerable adults.

1. Disclosure and Barring

2.1 The Provider shall procure that in respect of all potential staff or persons (including sub-contractors of any tier) who will be carrying out any Sensitive Works (each a “**Named Employee**”) before a Named Employee begins to attend the Site to perform any Sensitive Works:

2.1.1 each Named Employee is questioned as to whether he or she has any Convictions or CBOs;

2.1.2 the results of an Enhanced with Lists Check is obtained from the Disclosure and Barring Service in respect of each Named Employee;

2.1.3 to the extent permitted by law a copy of the results of such checks by the Provider as are referred to in clause 2.1.2 and 2.1.3 are notified to the Employer.

- 2.2 The Provider shall procure that:
- 2.2.1 no person who appears on a Barred List following the results of a Disclosure and Barring Service check shall be employed or engaged in the performance of the Sensitive Works; and
 - 2.2.2 it shall and shall procure that all Sub-Contractors shall comply with all reporting requirements of the Disclosure and Barring Service.
- 2.3 The Provider shall procure that no person who discloses any Convictions or CBOs, or who is found to have any Convictions following the results of a Disclosure and Barring Service check, is employed or engaged in carrying out any part of any Sensitive Works without the Employer's prior written consent (such consent not to be unreasonably withheld or delayed).
- 2.4 Insofar as permitted by law, the Provider shall procure that the Employer is kept advised at all times of any member of staff or employee of any Sub-Contractor of any tier engaged in the provision of the Sensitive Works:
- 2.4.1 who subsequent to his/her commencement of employment as a member of staff receives a Conviction or CBO which becomes known to the Contractor or a Sub-Contractor or whose previous Convictions or CBO become known to the Contractor or a Sub-Contractor (or any employee of the Contractor or Sub-Contractor involved in the provision of the Sensitive Works); or
 - 2.4.2 in respect of whom information is referred to the Disclosure and Barring Service pursuant to the Disclosure and Barring Service (as appropriate); or
 - 2.4.3 who the Disclosure and Barring Service is "minded to bar" or who is placed on a Barred List pursuant to the Disclosure and Barring Scheme which become known to the Contractor or Sub-Contractor.
- 2.5 In the event that any member of staff of the Contractor or a Sub-Contractor is added to a Barred List, the Provider shall procure that such member of staff is removed from the Site and shall cease to be engaged in the Sensitive Works.
- 2.6 Save to the extent prescribed otherwise pursuant to the Disclosure and Barring Service, this clause 2 shall not apply to those individuals who shall be required by the Provider to attend on any of the Sites to provide emergency reactive services. In the case of such individuals, the Provider shall ensure that such individuals are accompanied at all times while on the Site by a member of the Contractor's staff who has been properly employed or engaged in accordance with this clause 2.

3. Conduct of Staff and Security Arrangements

- 3.1 Whilst engaged at the Site the Provider shall and shall procure that its staff and the staff of any Sub-Contractor shall comply with any Customer's policies relating to the conduct of staff and security arrangements.
- 3.2 The Customer (acting reasonably) may:
- 3.2.1 instruct the Provider that disciplinary action is taken against any employee of the Provider or any Sub-Contractor involved in the provision of the *Works* (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or

negligent in his duties (in which case the Employer shall cooperate with any disciplinary proceedings and shall be advised in writing of the outcome); or

- 3.2.2 where the Employer has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the *Works* is undesirable, require the exclusion of the relevant employee from the relevant location(s).

4 Admission to the Site

- 4.1 Subject to the remainder of this paragraph 4.1, the Provider shall at least 20 Working Days before the date on which the Provider first carries out any Sensitive Works provide the Customer with a written list of the names and addresses of all employees or other persons who it expects may require admission to the Site in connection with the carrying out of any Sensitive Works and giving such other particulars as the Customer may require. The Provider shall update this information as and when any such individuals are replaced or complemented by others, not less than 20 Working Days before their inclusion. The decision of the Customer on whether any person is to be refused admission to the Site shall be final and conclusive and the Customer shall not be obliged to give reasons for its decision.
- 4.2 Where the Provider is unable (acting reasonably) to comply with paragraph 4.1 by the time period specified in it then the Provider shall comply with its obligations under that clause as soon as reasonably practicable and by no later than the end of the day on which the relevant individual first goes on-site. Until such time as the Provider has complied with its obligations in respect of that individual, her or she shall at all times be accompanied on-site by a member of the Provider's staff who has been properly notified to the Customer in accordance with paragraph 4.1.
- 4.3 This paragraph 4.3 shall not apply to those individuals who shall be required by the Provider to attend the Site to provide emergency reactive services. In the case of such individuals, the Provider shall ensure that such individuals are accompanied at all times while on the Site by a member of the Provider's staff who has been properly notified to the Customer in accordance with paragraph 4.1.

5 Refusal of Admission

- 5.1 TheCustomer reserves the right to refuse to admit to the Site or to the Existing Buildings any person employed or engaged by the Provider or any Sub-Contractor of any tier, whose admission would, in the opinion of the Customer, present a risk to themselves or any pupil, or to the Customer's property and shall not be obliged to give any reasons for such refusal."

6 Decision to Refuse Admission

- 6.1 The decision of the Customer as to whether any person is to be refused admission to the Site pursuant to paragraph 5 shall be final and conclusive.

7 Removal from Sites

- 7.1 The Provider shall comply with and/or procure compliance with any notice issued by the Customer from time to time requiring the removal from the Sites of any person employed thereon who in the opinion of the Customer acting reasonably is not acceptable on the grounds of risk to themselves or any pupil, or any Customer related party or property and that such persons shall not be employed again in connection with the *works* without the written consent of the Customer.

8 Minimising Disruption to the Provision of Educational Services

- 8.1 Insofar as the carrying out of the *Works* affects or may affect the provision of Educational Services at the School, the Provider shall procure that (subject to the terms of this contract) the *Works* are carried out:
 - 8.1.1 so as to minimise any disruption to the provision of Educational Services; and
 - 8.1.2 so as to ensure that no disruption is caused during the carrying out of examinations at the School during any examination period; and
 - 8.1.3 in compliance, to the extent reasonably practicable, with the Accepted Programme.

SCHEDULE 8

TUPE SCHEDULE

1. DEFINITIONS

The following definitions shall apply for the purpose of this Schedule 8:

Data Protection Legislation: the Data Protection Act 2018, the General Data Protection Regulation EU 2016/679 the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner (as amended or re-enacted from time to time);

Effective date: the date on which the Relevant Employees transfer to the Provider or Sub-contractor as a Relevant Transfer;

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE as amended from time to time;

Losses: all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands, charges and any other liabilities caused directly or indirectly whether arising under statute, contract or at common law;

Outgoing Provider: the provider of works similar to the Works immediately prior to the formation of this Framework Agreement;

Provider's Final Staff List: the list of all the Provider's and any Sub-Contractors' personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Works at the Works Transfer Date including all required Staffing Information;

Provider's Provisional Staff List: the list prepared and updated by the Provider of all the Provider's and any Sub-Contractors' personnel engaged in, or wholly or mainly assigned to, the provision of the Works or any part of the Works at the date of the preparation of the list in anticipation of the provision of the Provider's Final Staff List to the Replacement Provider;

Relevant Employees: those employees whose contracts of employment transfer by virtue of the application of TUPE;

Relevant Transfer: a relevant transfer for the purposes of TUPE;

Relevant Transfer Date: means the date a Relevant Transfer takes effect;

Replacement Works: any services that are identical or substantially similar to any of the Services and which the County Council receives in substitution for any of the Works following the termination or expiry of this Framework Agreement or any Call-Off Contract

Replacement Provider: any third-party supplier appointed by the County Council from time to time to provide any Replacement Works in place of the Provider;

Works: the works to be provided under the terms of this Framework Agreement.

Works Transfer Date: the date on which the Works (or any part of the Services), transfer from the Provider to any Replacement Provider;

Staffing Information: in relation to all persons detailed on the Provider's Provisional Staff List, in an anonymised format, such information as the County Council may reasonably request including the Employee Liability Information and details of whether the Provider's personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent by them on the provision of the Works;

Sub-Contractor: the contractors or providers of any tier engaged by the Provider or Outgoing Provider (or any other Sub-Contractor) to provide goods, services or works to, for or on behalf of the Provider or Outgoing Provider for the purposes of providing the Services to the County Council;

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) 2006 (as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014).

2. TRANSFER OF EMPLOYEES TO THE PROVIDER ON THE EFFECTIVE DATE

- 2.1 Where, as a result of this Framework Agreement or any Call-Off Contract a Relevant Transfer occurs resulting in the contracts of employment of any Relevant Employees transferring to the Provider or its Subcontractor, all TUPE obligations shall be the sole responsibility of the Outgoing Provider, the Provider or their Sub-Contractor (as applicable). In particular, the Outgoing Provider or its Sub-Contractor will be required under TUPE to provide the Provider or its Contractor (as applicable) with the Employee Liability Information in relation to the Relevant Employees. The County Council does not warrant the accuracy of this information.
- 2.2 The Provider shall be responsible for all remuneration, emoluments, benefits, entitlements and outgoings for the Relevant Employees and any other person who is or will be employed or engaged by the Provider in connection with the provision of the Works, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date.
- 2.3 The Provider shall as soon as reasonably practicable and in any event within five (5) business days following a written request from any Outgoing Provider / or Sub-Contractor (as applicable), provide details of any measures that the Provider or any Sub-Contractor envisages it will take in relation to any Relevant Employees. If there are no measures, the Provider will give confirmation of that fact, and shall indemnify any Outgoing Provider / Sub-Contractor against all Losses resulting from any failure by it to comply with this obligation.
- 2.4 The County Council shall have no liability for any Losses arising as a result of any breaches of TUPE or any other law for the accuracy or timeliness of any Employee Liability Information disclosed by the Outgoing Provider or its Sub-

Contractor to the Provider or its Sub-Contractor, whether that Employee Liability Information is disclosed directly to the Provider / Sub-Contractor by the Outgoing Provider / Sub-Contractor or via the County Council.

3. UNION RECOGNITION

The Provider shall in accordance with TUPE recognise the trade unions representing the Relevant Employees, where applicable.

4. EMPLOYMENT EXIT PROVISIONS

4.1 On the expiry or earlier termination of this Framework Agreement for whatever reason, the identity of the provider of the Works (or any part of the Works) may change (whether as a result of termination of this Framework Agreement or otherwise) resulting in a transfer of the Services in whole or in part ("Work Transfer"). If a Work Transfer is a Relevant Transfer then the contracts of employment of any Relevant Employees shall transfer to any Replacement Provider.

4.2 On the expiry or earlier termination of this Framework Agreement for whatever reason, the following provisions will apply.

4.2.1 the Provider shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and other employees or former employees of the Provider (who had been engaged in the provision of the Services), including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Work Transfer Date.

4.2.2 The Provider shall indemnify and keep indemnified in full the County Council and every Replacement Provider against all Losses incurred by the County Council or any Replacement Provider in connection with or as a result of any claim or demand against the County Council or any Replacement Provider(s) by:

- (a) any person who is or has been employed or engaged by the Provider or any Sub-Contractor in connection with the provision of any of the Services; or
- (b) any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Provider and/or any Sub-Contractor),

arising from or connected with any failure by the Provider or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, whether any such claim arises or has its origin before or after the Work Transfer Date unless such claim arises from an act or omission of the County Council or any Replacement Provider.

4.3 The Provider shall on receiving notice of termination of this Framework Agreement, or otherwise on request from any Replacement Provider(s) and at such times as required by TUPE, provide in respect of any person engaged or

employed by the Provider or any Subcontractor in the provision of the Works, the Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Replacement Provider(s), including information as to the possible application of TUPE to the employees. The Provider shall notify any Replacement Provider(s) of any material changes to this information as and when they occur.

- 4.4 At least twenty-eight (28) days prior to the Work Transfer Date, the Provider shall prepare and provide to the Replacement Provider(s), the Provider's Final Staff List, which shall be complete and accurate in all material respects. The Provider's Final Staff List shall identify which of the Provider's staff named are Relevant Employees.
- 4.5 The County Council shall in its discretion be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any services that are substantially the same type of services as (or any part of) the Services.
- 4.6 The Provider warrants that the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information will be true and accurate in all material respects and that no persons will be employed or engaged in the provision of the Works other than those included on the Provider's Final Staff List
- 4.7 The Provider shall ensure at all times that it has the right to provide these records under Data Protection Legislation
- 4.8 Notwithstanding the early termination provisions in this Framework Agreement or any Call-Off Contract, on receipt of notice of termination or in the six months prior to expiry of this Framework Agreement, the Provider shall not materially increase or decrease the total number of staff listed on the Provider's Provisional Staff List or their remuneration, or make any other change in the terms and conditions of those.

5. SUBCONTRACTING

Where a Subcontractor employs any Relevant Employees, the Provider shall procure that the Subcontractor shall deal with the transfer of employees and the provision of pension benefits in accordance with this Schedule as though references in this Schedule to the Provider were references to the Subcontractor and references to the Effective Date were references to the date of the transfer to the Subcontractor. The Provider shall indemnify and keep indemnified the County Council against any breach by the Provider or Subcontractor of this Schedule.

6. PENSIONS

Where applicable the Provider shall provide Relevant Employees with pension benefits in accordance with the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.

SCHEDULE 9

KEY PERFORMANCE INDICATORS

The KPI's listed below are the minimum to collect and report on

PROJECT	
PROVIDER	
PERIOD OF ASSESSMENT	
ASSESSOR	
DATE	

The KPIs listed below are the minimum that the Contract Administrator will collect and to report on to the Authority. Additional KPIs may be added from time to time by the Authority in consultation with the Contract Administrator. The Contract Administrator and Authority will use the KPIs to monitor Suppliers performance and as required use as a means of allocating works.

Suppliers failing to meet the definitions and parameters for the KPIs could be subject to suspension from the framework at the discretion of the of the Authority.

Should a Supplier record a failure under any of KPIs 1-2 in more than 15% of their allocation works. The Authority at their discretion may suspend a contractor for a period of 3 months or until otherwise satisfied on performance rectification.

The scoring mechanism below applies to KPI 3 only

Category	Score %	Definition
Unacceptable	0% -49%	Extreme lack of response to enquiries, very inaccurate preliminary cost estimates. Very late submission of final accounts, unhelpful staff, very poor and incompetent service on site. Extremely poor programme time scales and financial control. Complete disregard of instructions given and dissatisfied end users. Very poor technical support, aftercare and post-contract documentation
Poor	50% - 59%	Poor response to enquiries, inaccurate preliminary cost estimates. Late submission of final accounts, unsupportive staff, poor and not very competent service on site. Poor programme time scales and financial control. Unresponsive to instructions given and disappointed end users. Poor technical support, aftercare and post contract documentation
Satisfactory	60% - 79%	Satisfactory response to enquiries, realistic preliminary cost estimates. Submission of final accounts not always timely, mainly supportive staff, and competent service on site. Sensible programme time scales and financial control. Usually responsive to instructions given and quite happy end users.

		Reasonable technical support, aftercare and post contract documentation
Good	80% - 89%	Responsive to enquiries, accurate preliminary cost estimates. Timely submission of final accounts, supportive staff, and a good competent service on site. Good programme time scales and financial control. Receptive to instructions given and end users happy with projects. Good technical support, aftercare and post contract documentation
Excellent	90% - 100%	Immediate response to enquiries, very accurate preliminary cost estimates. Submission of final accounts always on before or on time, extremely supportive staff, and excellent competent service on site. Accurate programme time scales and financial control. Very receptive to instructions given and end users extremely happy with projects. Excellent technical support, aftercare and post contract documentation

For KPIs 1-2 will be reviewed on a 3 monthly basis.

KPI 3 The results will be collected annually prior to each anniversary date of the formation of the Framework Agreement.

This space is available for the assessor to note for the Framework Manager any comments especially when there has been exceptional or poor performance.

GROUP	NUMBER	KEY PERFORMANCE INDICATOR
Lead-in times & Start on Site	1	A program of works to be presented alongside the quotations / tender competition returns stating the required lead-in time and start on site date. Any dates missed will be marked as a failure (excluding agreed documented variations). (Pass / Fail)
3 monthly basis		More than 15% of their allocation works = Fail. The Authority at their discretion may suspend a contractor for a period of 3 months or until otherwise satisfied on performance rectification.

GROUP	NUMBER	KEY PERFORMANCE INDICATOR
Cost	2	Quotations / tender competition returns measured against Final Account (excluding agreed documented variations) Any specified items which have been excluded from the original
3 monthly basis		

	quotation / tender competition returns and presented in the final account will be marked as a failure. (Pass / Fail) More than 15% of their allocation works = Fail The Authority at their discretion may suspend a contractor for a period of 3 months or until otherwise satisfied on performance rectification.
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GROUP	NUMBER	KEY PERFORMANCE INDICATOR
Customer Satisfaction Survey	3	These will be distributed by the Authority to its property consultancy representatives (building/engineering/surveyors etc). The results will be collected annually prior to each anniversary date of the formation of the Framework Agreement. Individual questions are marked out of 10 and the Supplier is expected to achieve an average of 70% or greater across all questionnaires. The scoring table is detailed above
Collected annually		

SUMMARY OF KEY PERFORMANCE INDICATORS

Group	Nos.	KPI Summary	
Lead in Times & Start on Site	1	Stated lead times and Start on Site to actual	Over a period of 3 months if a Provider records a 'Fail' in more than 15% of their allocated works.
Cost	2	Quotations / tender competition returns measured against Final Account	Over a period of 3 months if a Provider records a 'Fail' in more than 15% of their allocated works.
Customer Satisfaction Survey	3	Customer review	Providers must achieve a minimum score of 70% or greater across all questionnaires.

Suspension Provisions for KPIs 1 and 2:

1. If the Provider at any point during the Term achieves a 'Fail' the County Council will require a meeting with the Provider to discuss the Provider's performance against the KPIs and how the Provider will resolve the issues identified.
2. If after the meeting the Provider's performance against the KPIs is still recording as a 'Fail' for the next reporting period, the Provider will be issued with an initial warning. If in the next reporting period the Provider's performance against the KPIs is still indicating a 'Fail' the Provider will be issued with a final warning.

3. If the Provider is still achieving a 'Fail' for the next reporting period after the final warning was issued the Provider will be suspended immediately from the Framework Agreement.
4. If the Provider is given three (3) initial warnings in a twelve (12) month rolling period the Provider will be immediately suspended from the Framework Agreement.
5. **The suspension provisions are detailed in clause 25 of the framework Agreement**

Suspension Provisions for KPI 3:

1. If the Provider at any point during the Term falls below the minimum KPI level of 70% for the County Council will require a meeting with the Provider to discuss the Provider's performance against the KPIs and how the Provider will resolve the issues identified.
2. If after the meeting the Provider's performance against the KPIs is still below 70%, the Provider will be issued with an initial warning. If in the next reporting period, the Provider's performance against KPI 3 is still below 70% the Provider will be issued with a final warning.
3. If the Provider is still performing below 70% against the KPI 3 after the final warning was issued the Provider will be suspended immediately from the Framework Agreement.
4. If the Provider is given three (3) initial warnings in a twelve (12) month rolling period the Provider will be immediately suspended from the Framework Agreement.
5. **The suspension provisions are detailed in clause 25 of the framework Agreement**

Other Provisions

The withholding of sums for not returning warranties are detailed in the Call of Terms and Conditions.

FORM 9.1 - Contractor (Provider) Framework Satisfaction Survey

QD115.7

SCC Framework Satisfaction Survey Contractor Performance



Property: _____

Project Details: _____

Project Value: _____

Contractor: _____

Please tick the relevant box to indicate how satisfied you are with the service provided by the Contractor using the following scale (please tick only one score to reflect your answer):

KEY:
0 - Unsatisfactory
1 - Poor
2 - Satisfactory
3 - Good
4 - Excellent

	0	1	2	3	4	n/a
1 Initial contact response times?	☐	☐	☐	☐	☐	☐
2 Ability to comply with Entrust programme?	☐	☐	☐	☐	☐	☐
3 Collaboration during design and solution management?	☐	☐	☐	☐	☐	☐
4 Timely submission of detailed quote?	☐	☐	☐	☐	☐	☐
5 Adherence to Health & Safety on site and site specific rules?	☐	☐	☐	☐	☐	☐
6 Conformance to CDM requirements and documents on site?	☐	☐	☐	☐	☐	☐
7 Supervision of site staff and subcontractors?	☐	☐	☐	☐	☐	☐
8 Conduct of employees on site?	☐	☐	☐	☐	☐	☐
9 Quality of response to requests / queries?	☐	☐	☐	☐	☐	☐
10 Communication between Contractor and Entrust?	☐	☐	☐	☐	☐	☐
11 Notification and control of variations (change of scope to works)?	☐	☐	☐	☐	☐	☐
12 Compliance with approved / agreed specification?	☐	☐	☐	☐	☐	☐
13 Quality and standard of completed works on site?	☐	☐	☐	☐	☐	☐
14 Completion of works to agreed dates?	☐	☐	☐	☐	☐	☐
15 Condition of the site left on completion	☐	☐	☐	☐	☐	☐
16 Submission of health and safety files and certification documents?	☐	☐	☐	☐	☐	☐
17 Timely submission and accuracy of final accounts	☐	☐	☐	☐	☐	☐
18 Response to defects?	☐	☐	☐	☐	☐	☐
19 Adherence to original estimate?	☐	☐	☐	☐	☐	☐
20 Financial Control of project e.g. adherence to VO and cash flow?	☐	☐	☐	☐	☐	☐
21 Overall Performance?	☐	☐	☐	☐	☐	☐
22 Recommend for use on future projects?	☐	☐	☐	☐	☐	☐

Comments - please indicate why you scored 0, 1 or 4

Completed by: _____

Date: _____

Position: _____

FORM 9.2 - Provider Performance Survey (End-User Satisfaction)

QD115.5

CUSTOMER SATISFACTION SURVEY
Contractor Performance


 Inspiring Futures

Property: _____
Project Details: _____
Project Value: _____ **Contractor:** _____

Please tick the relevant box to indicate how satisfied you are with the service provided by the Contractor using the following scale (please tick only one score to reflect your answer):

	0	1	2	3	4	n/a
KEY: 0 - Unsatisfactory						
1 - Poor						
2 - Satisfactory						
3 - Good						
4 - Excellent						
1 Initial contact?	☐	☐	☐	☐	☐	☐
2 General standard of workmanship and site tidiness?	☐	☐	☐	☐	☐	☐
3 Comply with any agreed site rules?	☐	☐	☐	☐	☐	☐
4 Conduct of employees on site?	☐	☐	☐	☐	☐	☐
5 Supervision of site staff?	☐	☐	☐	☐	☐	☐
6 Control of disruption to your day to day activities?	☐	☐	☐	☐	☐	☐
7 Quality of response to requests / queries?	☐	☐	☐	☐	☐	☐
8 General understanding and adherence to Health & Safety on site?	☐	☐	☐	☐	☐	☐
9 Communication between Contractor and Customer?	☐	☐	☐	☐	☐	☐
10 Completion of works to agreed dates?	☐	☐	☐	☐	☐	☐
11 Condition of the site left on completion?	☐	☐	☐	☐	☐	☐
12 Response to defects?	☐	☐	☐	☐	☐	☐
13 Adherence to original estimate?	☐	☐	☐	☐	☐	☐
14 Overall service provided?	☐	☐	☐	☐	☐	☐
15 Recommend for use on future projects?	☐	☐	☐	☐	☐	☐

Have you any comments or suggestions for improving the service provided by Entrust Property Services Maintenance?

Completed by: _____
Position: _____

From time to time Entrust may wish to use your comments for promotional material, please tick here if you do not want your comments to be used
 ☐

Thank you for taking the time to complete and return this survey, your responses are important to us and can help to shape future service delivery.

Please return to: Sarah Howe, Entrust Property Services, Riverway Centre, Riverway, Stafford, Staffordshire, ST16 3TH

SCHEDULE 10

TENDER

Please refer to the ITT Questionnaire that can be found towards the back of this contract